

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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THUNDER PROPERTIES, INC.,

Plaintiff,

v.

KATHLEEN J. TREADWAY, *et al*,

Defendants.

Case No. 3:15-cv-00141-MMD-VPC

ORDER

I. SUMMARY AND BACKGROUND

This case comes before the Court through Defendant Federal National Mortgage Association (“Fannie Mae”) and Wells Fargo’s Petition for Removal. (ECF No. 1.) Plaintiff Thunder Properties, Inc. filed this action on February 19, 2015, in the Second Judicial District Court in Washoe County, Nevada, to quiet title to certain real property located at 481 Pine Meadows in Sparks, Nevada. Fannie Mae removed the action pursuant to 28 U.S.C. § 1331, citing to the Ninth Circuit Court of Appeals’ decision in *Lightfoot v. Cendant Mortgage Corp.*, 769 F.3d 681, 683 (9th Cir. 2014), where the court construed the “sue and be sued” clause in Fannie Mae’s federal charter as a basis for conferring federal question jurisdiction. (ECF No. 1 at 3.)

In a decision issued on January 18, 2017, the Supreme Court overturned the Ninth Circuit, holding that Fannie Mae’s authority “to sue and to be sued, and to complain and to defend in any court of competent jurisdiction, State or Federal,” 12 U.S.C. § 1723a(a), does not confer federal jurisdiction over all cases involving Fannie Mae. *Lightfoot v. Cendant Mortgage Corp.*, 137 S.Ct. 553, 558 (2017). Rather, the Court

1 found that Fannie Mae's charter "permits suit in any [state or] federal court *already*
2 *endowed* with subject-matter jurisdiction over the suit." *Id.* at 561 (emphasis added).
3 Thus, where removal is based solely on the "sue or be sued" clause in its charter, Fannie
4 Mae fails to establish that a federal district court has jurisdiction in the suit. *Id.* at 564-65.

5 On January 20, 2017, the Court issued an order to show case requiring Fannie
6 Mae to show why, after the Supreme Court's decision, the case should not be remanded
7 for lack of jurisdiction. (ECF No. 68.) Fannie Mae responded (ECF No. 69) and both
8 Thunder Properties, and Williamsburg Townehomes Homeowners Association replied
9 (ECF Nos. 70, 71). For the reasons discussed below, Fannie Mae has failed to provide a
10 basis for federal jurisdiction, and therefore the case will be remanded to the Second
11 Judicial District Court.

12 **II. LEGAL STANDARD**

13 Federal courts are courts of limited jurisdiction, having subject-matter jurisdiction
14 only over matters authorized by the Constitution and Congress. U.S. Const. art. III, § 2,
15 cl. 1; *e.g.*, *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A suit
16 filed in state court may be removed to federal court if the federal court would have had
17 original jurisdiction over the suit. 28 U.S.C. § 1441(a). However, courts strictly construe
18 the removal statute against removal jurisdiction, and "[f]ederal jurisdiction must be
19 rejected if there is any doubt as to the right of removal in the first instance." *Gaus v.*
20 *Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The party seeking removal bears the
21 burden of establishing federal jurisdiction. *Durham v. Lockheed Martin Corp.*, 445 F.3d
22 1247, 1252 (9th Cir. 2006).

23 Federal district courts have "original jurisdiction of all civil actions arising under
24 the . . . laws . . . of the United States." 28 U.S.C. § 1331. "The presence or absence of
25 federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which
26 provides that federal jurisdiction exists only when a federal question is presented on the
27 face of the plaintiff's properly pleaded complaint." *Caterpillar Inc. v. Williams*, 482 U.S.

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1 386, 392, (1987). But “a case may not be removed to federal court on the basis of a
2 federal defense.” *Id.* at 393.

3 **III. ANALYSIS**

4 Fannie Mae argues that even after *Lightfoot*, the Court retains jurisdiction
5 because it had a separate valid justification for removal based on an alternate theory of
6 federal question jurisdiction — namely that it falls under a doctrine unique to cases
7 involving requests for declarative judgment. Fannie Mae additionally argues that
8 because it identified federal question jurisdiction as its original basis for removal, and
9 because the facts supporting its new theory were available to all of the parties at the time
10 of removal, it can rely on its new theory of jurisdiction even if it did not specifically
11 address it in its petition for removal. However, even if the Court accepts Fannie Mae’s
12 procedural and equitable arguments, the new theory it proposes does not support
13 federal question jurisdiction in this case.

14 Generally, federal question jurisdiction turns on the face of the plaintiff’s well-
15 pleaded complaint. See *Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation*
16 *Trust for S. Cal.*, 463 U.S. 1, 9–10 (1983). There is, however, a small wrinkle in this rule
17 in the context of actions for declaratory judgment. As Justice Jackson noted decades
18 ago, suits involving declarative relief often flip the parties’ expected positions. Plaintiffs
19 seeking declaratory judgment are frequently establishing a defense meant to head off
20 another potential related suit. *Pub. Serv. Comm’n of Utah v. Wycoff Co.*, 344 U.S. 237,
21 248 (1952). Therefore, when considering questions of federal question jurisdiction,
22 courts look at both the plaintiff’s complaint and the “character of the threatened action.”
23 *Medtronic, Inc. v. Mirowski Family Ventures, LLC*, 134 S. Ct. 843, 848 (2014) (quoting
24 *Wycoff*, 344 U.S. at 248). “That is to say, they ask whether ‘a coercive action’ brought by
25 ‘the declaratory judgment defendant . . . would necessarily present a federal question.’”
26 *Id.* (quoting *Franchise Tax Bd. of State of Cal.*, 463 U.S. at 19). This pragmatic doctrine
27 balances the unique nature of requests for declaratory judgment with the well-
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1 established rule that the Declaratory Judgment Act did not extend federal court
2 jurisdiction beyond its previous bounds.

3 A good example of this doctrine, and indeed a place where it often plays out, is in
4 a suit between a patent holder and an alleged patent infringer. The alleged infringer may
5 file an action seeking a declaratory judgment that she is not violating any patents, or that
6 the patents at issue are invalid. Because a declaratory judgment in this type of case is
7 meant to defend against an eventual claim against the plaintiff for patent infringement,
8 federal courts have consistently recognized jurisdiction on the theory that an
9 infringement suit by the defendant would clearly raise a federal question. *See Franchise*
10 *Tax Bd. of State of Cal.*, 463 U.S. at 27 n. 19.

11 In this case, Fannie Mae argues that it, like the defendant in *Medtronic*, are
12 defendants in a declaratory judgment suit who had a viable and related federal claim
13 against the plaintiff. Fannie Mae argues that the obvious action it would have brought in
14 relation to the declaratory relief is “a declaratory judgment claim against Plaintiff, seeking
15 recognition that the HOA Sale did not extinguish the Deed of Trust.”¹ (ECF No. 69 at 6.)
16 This hypothetical claim, according to Fannie Mae, would have raised a substantial
17 question of federal law based on 12 U.S.C. § 4617(j)(3) — the so called Federal
18 Foreclosure Bar — and therefore supported federal question jurisdiction. (*Id.*) However,
19 the action Fannie Mae identifies does not fit into the framework described above.

20 The “threatened action” that Fannie Mae identifies (and in fact pleaded as
21 counterclaims) is another declaratory claim, rather than “a coercive action.” *Medtronic*,
22 *Inc.*, 134 S. Ct. at 848. Another quiet title claim, like the one Fannie Mae suggests, does
23 not implicate the same considerations as a coercive action, because the unique nature
24 of a declaratory action — *i.e.*, that is often used to establish a defense to an impending
25 coercive suit — is what triggered the doctrine in the first place. In fact, the doctrine
26 seems to have originally emerged to *prevent* declaratory judgment plaintiffs from

27 ¹In fact, Fannie Mae did assert two counterclaims, for quiet title and declaratory
28 relief, against Thunder Properties. (ECF No. 17 at 12-14.)

1 litigating in federal court in order to establish defenses for state court. See *Wycoff*, 344
2 U.S. at 248 (“Federal courts will not seize litigations from state courts merely because
3 one, normally a defendant, goes to federal court to begin his federal-law defense before
4 the state court begins the case under state law.”) Indeed, courts have recognized that
5 the distinction between a coercive suit and a declaratory suit is a meaningful one: “In the
6 declaratory-judgment context, whether a federal question exists is determined by
7 reference to a hypothetical *non-declaratory* suit (i.e., a suit for coercive relief) between
8 the same parties.” *Chase Bank USA, N.A. v. City of Cleveland*, 695 F.3d 548, 554 (6th
9 Cir. 2012) (emphasis added); see also *Koniag, Inc. v. Andrew Airways, Inc.*, No. 3:13-
10 CV-00051-SLG, 2014 WL 4926344, at *3 (D. Alaska Sept. 30, 2014) (approvingly citing
11 *Chase Bank*, and determining that declaratory actions are distinct from coercive ones
12 under the *Medtronic* framework).

13 The face of Thunder Properties’ complaint contains only claims based on state
14 law (ECF No. 1-1), and Fannie Mae has not convincingly shown an exception to the well-
15 pleaded complaint rule. The configuration of this case more closely resembles the
16 “settled law that a case may *not* be removed . . . on the basis of a federal defense,”
17 *Caterpillar*, 482 U.S. at 393, than the doctrine described in *Medtronic*, where a request
18 for declaratory judgment is closely related to a viable coercive claim by the defendant.
19 Therefore, the Court finds that Fannie Mae, who bears the burden of establishing federal
20 jurisdiction, has failed to show cause why the case should not be remanded.

21 **IV. CONCLUSION**

22 The Court notes that the parties made several arguments and cited to several
23 cases not discussed above. The Court has reviewed these arguments and cases and
24 determines that they do not warrant discussion as they do not affect the Court’s
25 determination of subject matter jurisdiction.

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1 It is therefore ordered that this case be remanded consistent with this opinion.

2 The Clerk is instructed to close this case.

3 DATED this 7th day of March 2017.

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6 MIRANDA DU
7 UNITED STATES DISTRICT JUDGE
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